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CSS Healthcare Services, Inc. and Victoria Torley.
Case 10–CA–37628

August 10, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND PEARCE

On January 29, 2010, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 355 NLRB No. 5.¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the 11th Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 355 NLRB No. 5, which is incorporated by reference.³

Dated, Washington, D.C. August 10, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Mark Gaston Pearce, Member

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² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

³ In finding that the Respondent violated Sec. 8(a)(1) by terminating employee Victoria Torley, Chairman Liebman and Member Pearce adopt the judge's analysis. They also agree, however, that the violation is established under Member Schaumber's view of the evidence, as set forth in fn. 2 of the incorporated decision. 355 NLRB No. 5, slip op. at 1.